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SERVICE DATE – JANUARY 13, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 716 (Sub-No. 2)

CIVIL MONETARY PENALTIES—2017 ADJUSTMENT

Digest:¹ The Board is issuing a final rule to adjust its existing civil monetary penalties for inflation for 2017 in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Decided: January 9, 2017

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is issuing a final rule to implement the annual inflationary adjustment to its civil monetary penalties, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective on January 13, 2017.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher: (202) 245-0355. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), passed as part of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 599, requires agencies to adjust their civil penalties for inflation annually, beginning on January 15, 2017, and no later than January 15 of every year thereafter. In accordance with the 2015 Act, annual inflation adjustments will be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for October of the previous year and the October CPI-U of the year before that. Penalty level adjustments should be rounded to the nearest dollar.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

II. Discussion

The statutory definition of civil monetary penalty covers various civil penalty provisions under the Rail (Part A), Motor Carriers, Water Carriers, Brokers, and Freight Forwarders (Part B), and Pipeline Carriers (Part C) provisions of the Interstate Commerce Act, as amended by the ICC Termination Act of 1995. The Board's civil (and criminal) penalty authority related to rail transportation appears at 49 U.S.C. §§ 11901-11908. The Board's penalty authority related to motor carriers, water carriers, brokers, and freight forwarders appears at 49 U.S.C. §§ 14901-14915. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. §§ 16101-16106.² The Board has regulations at 49 C.F.R. pt. 1022, which codify the method set forth in the 2015 Act for annually adjusting for inflation the civil monetary penalties within the Board's jurisdiction.³

As set forth in this final rule, the Board is amending 49 C.F.R. pt. 1022 so that its regulations and civil monetary penalties conform to the requirements of the 2015 Act. The adjusted penalties set forth in the rule will apply only to violations which occur after the effective date of this regulation.

In accordance with the 2015 Act, the annual adjustment adopted here is calculated by multiplying each current penalty by the cost-of-living adjustment factor of 1.01636, which reflects the percentage change between the October 2016 CPI-U (724.113) and the October 2015 CPI-U (712.458). The table at the end of this decision shows the relevant statutory provision of each civil penalty and a description, the current baseline statutory civil penalty level, and the adjusted statutory civil penalty level for 2017.

III. Final Rule

The final rule is set forth at the end of this decision. This final rule is issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(B), does not require that process “when the agency for good cause finds” that public notice and comment are “unnecessary.” Here, Congress has mandated that the agency make the inflation adjustment to its civil monetary penalties. The Board has no discretion to set alternative levels of adjusted civil monetary penalties, because the amount of the inflation adjustment must be calculated in accordance with the statutory formula. The Board simply determines the amount of inflation adjustments by performing technical, ministerial computations. Because the Board has no discretion to do anything except promulgate the rule and perform ministerial computations to apply it, the Board has determined that there is good

² The Board also has criminal penalty authority, enforceable in a federal criminal court. Congress has not, however, authorized federal agencies to adjust statutorily-prescribed criminal penalty provisions for inflation, and this rule does not address those provisions.

³ The current statutory civil penalties were set through an interim final rule, Civil Monetary Penalty Inflation Adjustment Rule, EP 716 (Sub-No. 1) (STB served Oct. 20, 2016). In that decision, the Board issued a “catch-up adjustment” for its civil monetary penalties as mandated by the 2015 Act.

cause to promulgate this rule without soliciting public comment and to make this regulation effective immediately upon publication.

IV. Regulatory Flexibility Statement

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. §§ 801 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

V. Paperwork Reduction Act

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 et seq.

VI. List of Subjects in 49 C.F.R. pt. 1022

Administrative practice and procedures, Brokers, Civil penalties, Freight forwarders, Motor carriers, Pipeline carriers, Rail carriers, Water carriers.

It is ordered:

1. The Board amends its rules as set forth in this decision. Notice of the final rule will be published in the Federal Register.

2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Code of Federal Regulations

For the reasons set forth in the preamble, part 1022 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1022—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

1. The authority citation for part 1022 continues to read as follows:

Authority: 5 U.S.C. 551-557; 28 U.S.C. 2461 note; 49 U.S.C. 11901, 14901, 14903, 14904, 14905, 14906, 14907, 14908, 14910, 14915, 16101, 16103.

2. Revise § 1022.4(b) to read as follows:

§ 1022.4 Cost-of-living adjustments of civil monetary penalties.

(b) The cost-of-living adjustment required by the statute results in the following adjustments to the civil monetary penalties within the jurisdiction of the Board:

U.S. Code Citation	Civil Monetary Penalty Description	Baseline Penalty Amount	Adjusted Penalty Amount (2017)
	Rail Carrier Civil Penalties		
49 U.S.C. 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	\$7,512	\$7,635
49 U.S.C. 11901(b)	For each violation under § 11124(a)(2) or (b).	\$751	\$763
49 U.S.C. 11901(b)	For each day violation continues.	\$38	\$39
49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under §§ 10901-10906.	\$7,512	\$7,635
49 U.S.C. 11901(d)	For each violation under §§ 11123 or 11124(a)(1).	\$150-\$751	\$152-\$763
49 U.S.C. 11901(d)	For each day violation continues.	\$75	\$76
49 U.S.C. 11901(e)(1)	For each violation under §§ 11141-11145.	\$751	\$763
49 U.S.C. 11901(e)(2)	For each violation under § 11144(b)(1).	\$150	\$152
49 U.S.C. 11901(e)(3-4)	For each violation of reporting requirements, for each day.	\$150	\$152
	Motor and Water Carrier Civil Penalties		
49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day.	\$1,028	\$1,045
49 U.S.C. 14901(a)	For each violation under §§ 13901 or 13902(c).	\$10,282	\$10,450

49 U.S.C. 14901(a)	For each violation related to transportation of passengers.	\$25,705	\$26,126
49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act.	\$20,564-\$41,128	\$20,900-\$41,801
49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	\$1,502	\$1,527
49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	\$15,025	\$15,271
49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	\$37,561	\$38,175
49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule.	\$3,005	\$3,054
49 U.S.C. 14901(e)	Minimum penalty for each additional violation.	\$7,512	\$7,635
49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	\$150,245	\$152,703
49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect.	\$300	\$305
49 U.S.C. 14904(a)	For all subsequent violations.	\$376	\$382
49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	\$751	\$763
49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations.	\$3,005	\$3,054
49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under § 13702.	\$751	\$763
49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations.	\$3,005	\$3,054
49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of § 14103(a), and knowingly authorizing, consenting to, or permitting a violation of § 14103(a) & (b).	\$15,025	\$15,271
49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation.	\$2,056	\$2,090
49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation.	\$5,141	\$5,225

49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations.	\$7,512	\$7,635
49 U.S.C. 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1).	\$3,005	\$3,054
49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	\$751	\$763
49 U.S.C. 14915(a)(1) & (2)	Minimum penalty for holding a household goods shipment hostage, for each day.	\$11,940	\$12,135
	Pipeline Carrier Civil Penalties		
49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day.	\$7,512	\$7,635
49 U.S.C. 16101(b)(1) & (4)	For each recordkeeping violation under § 15722, each day.	\$751	\$763
49 U.S.C. 16101(b)(2) & (4)	For each inspection violation liable under § 15722, each day.	\$150	\$152
49 U.S.C. 16101(b)(3) & (4)	For each reporting violation under § 15723, each day.	\$150	\$152
49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information.	\$1,502	\$1,527